S.B.CIVIL CONTEMPT PETITION NO.16/2003

Brij Lal.
vs.
OP Sinwar.

DATE OF ORDER ::: 20.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Pradeep Shah, for the petitioner.
Mr. NL Joshi, for the respondent.
Mr. OP Sinwar, contemner, present in person.

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Heard learned counsel for the parties.

Brief facts of the case are that in a criminal case, an application was submitted by the petitioner on 25.6.2003 with a prayer that the court may proceed against four co-accused persons who were named in the F.I.R. but not charge-sheeted. This application filed by the petitioner under Section 319 Cr.P.C. was dismissed by the trial court (contemner) on 26.6.2003. The petitioner preferred revision petition before this Court to challenge the order of the trial court, upon which this Court stayed the further proceedings of the criminal case pending in the court of the contemner.

According to the contemner, the counsel for the

petitioner submitted an application before the court below and informed the Court that further proceedings in the above criminal case have been stayed by the High Court. He also submitted an affidavit along with the application but the contemner, after observing that the judgment has already been dictated and has been typed and, therefore, it is not possible to reserve the judgment.

Notice were issued to the contemner upon which the contemner submitted his reply. He stated that the final arguments were heard and concluded on 10.7.2003 and the case was fixed for judgment on 15.7.2003. The judgment was duly typed and thus, the verdict reached and was known to atleast steno, therefore, he pronounced the judgment. In addition to above, the contemner stated as under :-

> "At that stage, I felt so far as other accused prayed to be summoned can be tried in a separate trial, if the Hon'ble High Court so orders but it would not serve the larger public interest and human liberty to pronounce the judgment and set to liberty a person already in prison during pendency of trial. The judgment was pronounced bonafide and in good faith. In the revision of 319 Cr.P.C. proceedings, the complainant had nothing to do with the accused Om Prakash."

Today, the contemner is present in person and he tendered unconditional apology for not obeying the High Court's order on the ground that the judgment was already

dictated and it came to the knowledge of the steno and he might have committed mistake in exercise of his discretion.

I have considered the submissions.

Once the stay order reached to the Court, the contemner should not have proceeded. It is also relevant to mention here that the contemner even tried to justify by saying that “if the Hon'ble High Court so orders but it would not serve the larger public interest and human liberty to pronounce the judgment and set to liberty a person already in prison during pendency of trial”. This also shows that if in view of the High Court's order, he would have stayed the proceedings and would have not pronounced the judgment, then it would have been against the public interest, was the view of the contemner.

The contemner since has realised his mistake and tendered unconditional apology, therefore, with an advice to the contemner to take care in future, the contempt proceedings are dropped and notices are discharged.

In view of the above, this contempt petition is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya